result could have been reached on other more satisfactory grounds. See 20 HARV. L. REV. 223; 27 *id.* 386. And in general, the courts should be extremely cautious in relying upon a principle so vague, and so likely to breed confusion in the law of corporations. See *Gallagher* v. *Germania Brewing Co.*, 53 Minn. 214, 219. But where the corporate machinery is obviously being used to perpetrate a fraud, and where a just result can be reached on no other theory, it is perfectly justifiable to disregard the fiction. The peculiar interest of the principal case lies in the fact that it appears to be one of the few instances in which a disregard of the fiction is really necessary. It is still barely possible, however, that the same result might have been reached on the ground that by colluding with the grantee to perpetrate his fraud, the corporation had estopped itself from setting up the statute. See *Union Mortgage, Banking & Trust Co.* v. *Peters*, 72 Miss. 1058, 18 So. 497; *Bridges* v. *Stephens*, 132 Mo. 524, 543.

CORPORATIONS — STOCKHOLDERS: RIGHTS INCIDENT TO MEMBERSHIP — SUIT IN BEHALF OF CORPORATION: EFFECT OF PRIOR SUIT BY ANOTHER STOCKHOLDER. — The plaintiff brought a shareholder's bill to have a contract between his corporation and a third party set aside as fraudulent. The defendant set up a prior suit by another shareholder in which the agreement had been attacked as voluntary and *ultra vires*. *Held*, that the matter is *res judicata*. *Dana* v. *Morgan*, 219 Fed. 313 (Dist. Ct., S. D., N. Y.).

A shareholder's bill is founded upon the right of the shareholder to compel the corporation to assert some right or defense which it has against the third party. *Hearst* v. *Putnam Mining Co.*, 28 Utah 184, 77 Pac. 753. The corporation is, therefore, a necessary party; and its refusal to sue, or facts disclosing the futility of a demand for suit, must be alleged. *Davenport* v. *Dows*, 18 Wall. (U. S.) 626; *Hawes* v. *Oakland*, 104 U. S. 450; *Mount* v. *Radford Trust Co.*, 93 Va. 427, 25 S. E. 244. Since, in substance, a right of the corporation is in issue, an adjudication on the merits bars a subsequent action either by the corporation or by another shareholder. *Montezuma Cattle Co.* v. *Dake*, 16 Colo. App. 139, 63 Pac. 1058; *Hearst* v. *Putnam Mining Co.*, *supra*; *Alexander* v. *Donohoe*, 143 N. Y. 203, 38 N. E. 263. But if the prior action does not go to the merits, as where the suit is dismissed for failure to allege the refusal of the corporation to sue, a subsequent action can be maintained. *The Telegraph* v. *Lee*, 125 Ia. 17, 98 N. W. 364. The principal case correctly disallows a second action even though relief was asked on a varied ground. See *Fayerweather* v. *Ritch*, 91 Fed. 721, 725. This result, although perhaps occasionally depriving a corporation of a right of action lost through a shareholder's unsuccessful method of presentation, seems justifiable as a deterrent to corporate inaction. It would, of course, not follow were the shareholder suing in his own right. See *Morris* v. *Elyton Land Co.*, 125 Ala. 263, 28 So. 513.

DEATH BY WRONGFUL ACT — DEFENSES TO STATUTORY LIABILITY — RELEASE BY DECEASED. — The plaintiff's husband, who was killed by defendant's negligence, before his death gave a full release of all claims. The widow now sues, under a statute giving the next of kin an action where death is caused by negligence. *Held*, that she may recover. *Rowe* v. *Richards*, 151 N. W. 1001 (S. D.).

For a discussion of the questions raised by this case, see NOTES, p. 802.

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY IN GENERAL — LIABILITY TO WIDOW WHO MARRIED DECEASED AFTER INJURY. — The deceased, after being mortally injured through the defendant's negligence, married the plaintiff who had previously become engaged to him. The plaintiff now sues

as executrix under N. Y. CODE CIV. PROC., §§ 1902–4, which allows the personal representative of the deceased to recover for the benefit of the widow or next of kin the pecuniary loss resulting from the death to the statutory beneficiaries. *Held*, that she may recover substantial damages. *Radley* v. *Le Ray Paper Co.*, 108 N. E. 86 (N. Y.).

The so-called death statutes modeled after Lord Campbell's Act have been generally held to create a new right, unknown to the common law, vesting in the statutory beneficiaries on the death of the injured person. *Meekin* v. *Brooklyn Heights R. R. Co.*, 164 N. Y. 145, 58 N. E. 50. See *Needham* v. *Grand Trunk Ry. Co.*, 38 Vt. 294, 304. *Contra, Dolson* v. *Lake Shore & M. S. Ry. Co.*, 128 Mich. 444, 87 N. W. 629. The right is thus not a survival of the deceased's cause of action and no damages can be recovered for personal injuries to him. *Meekin* v. *Brooklyn Heights R. Co.*, *supra*. Furthermore, the statute here grants recovery only for pecuniary loss suffered by the beneficiary, and it is settled that no damages for injuries to feelings and loss of companionship will be recognized. *Tilley* v. *Hudson River R. Co.*, 24 N. Y. 471. Therefore, though the plaintiff, as widow of the deceased, is clearly within the description of the statute and entitled to at least nominal damages, she cannot claim, as widow, damages received as *fiancée*, since no right of action is given a *fiancée*. Hence the measure of her recovery should be her husband's probable expectancy of life at the time of the marriage. To be sure, a posthumous child has been allowed to recover damages based on the father's expectancy at the time of the accident. *The George & Richard*, 1 L. R. 3 A. & E. 466, 480; *Nelson* v. *Galveston, H. & S. A. Ry. Co.*, 78 Tex. 621, 14 S. W. 1021. But this recovery can only rest upon the inchoate right of an unborn child to the support of its parent, — a right peculiar in that it is broken as soon as it arises. See 15 HARV. L. REV. 313. It is submitted that a *fiancée* has no analogous inchoate right to the support of her future husband in addition to her rights arising from the contract to marry. Yet the principal case is in accord with the only other direct authority on the point. *Gross* v. *Electric Traction Co.*, 180 Pa. St. 99, 36 Atl. 424.

DEEDS — CONSTRUCTION AND OPERATION IN GENERAL — EFFECT OF REDELIVERY OF AN UNRECORDED DEED TO THE GRANTOR IN ORDER TO DIVEST TITLE FROM THE GRANTEE. — The plaintiff sold land and, to avoid recording his own deed, redelivered it to his grantor and had a deed made directly to the purchaser, who entered into possession, paid the full purchase price and made various improvements. The plaintiff now tries to recover back the land upon the ground that, since the contract was by parol, he was not divested of his legal title. *Held*, that the plaintiff is estopped from asserting his title. *Rowe* v. *Epling*, 173 S. W. 801 (Ky. App.).

Under the recording acts, the title of a vendee cannot be defeated by an unrecorded deed of which he had no notice. *Ely* v. *Brewer*, 62 So. 742 (Ala.). But ordinarily the purchaser would have full notice of the prior deed in situations like that in the principal case, and cannot claim protection on this theory. And the weight of authority holds that the statute of frauds prevents the revesting of title in the grantor by the mere redelivery or cancellation of the deed. *Botsford* v. *Morehouse*, 4 Conn. 550. *Contra, Commonwealth* v. *Dudley*, 10 Mass. 403. See 1 DEVLIN, DEEDS, 3 ed., § 300. But the courts usually give the new purchaser relief on the ground that the grantee is estopped from asserting his legal title. *Potter* v. *Adams*, 125 Mo. 118, 28 S. W. 490; *Howard* v. *Huffman*, 3 Head (Tenn.) 562. *Contra, Raynor* v. *Wilson*, 6 Hill (N. Y.) 469. The elements of a strict estoppel are not present if it be assumed that the vendee knows the real situation. But the result may be supported upon the theory that the grantee, by deliberately destroying the evidence of his title, is precluded from setting up secondary evidence to defeat his intention.